

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-113182-09

Date:

May 06, 2009

Legend

Parent =

Sub =

Company Official =

a =

b =

c =

d =

Date 1 =

Dear :

This letter responds to a letter dated March 9, 2009, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election (the "Election") under § 1.1502-32(b)(4) to waive loss carryovers from separate return limitation years of Sub. The information submitted is summarized below.

Parent is the common parent of an affiliated group (the "Parent Group") that files a consolidated Federal income tax return on a calendar year basis. Parent acquired all of the common stock and common stock equivalents of Sub for cash on Date 1. Sub had net operating losses available for carryover to taxable years beginning after Date 1 totaling \$a. Parent has represented that because of a limitation imposed by § 382 as a result of an earlier ownership change, the maximum amount of such loss carryovers that the Parent Group would be permitted to use was \$b per year. Pursuant to §§ 172 and 382, the maximum amount of the losses that the Parent Group would ever be permitted to use is \$c. Net operating losses of \$d were guaranteed as of Date 1 to expire unutilized. The Parent Group has in fact used \$c of such loss carryovers, and the remaining \$d of loss carryovers have expired.

Section 1.1502-32(b)(4)(i) provides that if a corporation has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all Federal income tax purposes immediately before the corporation becomes a member of the consolidated group. Section 1.1502-32(b)(4)(iv) provides that such an election must be made in a separate statement filed with the consolidated group's return for the year the corporation becomes a member.

The Election was required to be filed with the Parent Group's consolidated income tax return for its taxable year that included Date 1. For various reasons, however, Parent failed to make the Election in a timely manner. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the election.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by regulations, i.e., § 1.1502-32(b)(4)(iv). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided it shows that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to file the Election timely. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the election. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to amend the Parent Group's consolidated federal income tax return for the taxable year that included Date 1 to include the Election as described above. A copy of this letter must be attached to such return; alternatively, if the amended return is filed electronically this requirement may be satisfied by attaching to that return a statement that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the Parent Group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the federal income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter. In particular, we express no opinion with respect to the amount of any net operating losses of Sub, the amount of any § 382 limitation, or the amount of net operating losses that could be utilized prior to their expiration. Further, we express no opinion as to the consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer or taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Parent's authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)